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LAW AND LITERATURE

VOLUME III

Professor Simon Stern

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Faculty of Law
University of Toronto

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Oct. 30 - Copyright, Authorship, Originality

Copyright, Authorship, Originality

Mark Rose, excerpts from *Authors and Owners: The Invention of Copyright* (Harvard UP, 1994): Preface (pp. vii - x), Chap. 1, "The Question of Literary Property" (pp. 1 - 8), Chaps. 7 & 8, "Property / Originality / Personality" & "Strange Changes" (pp. 112-42)

Martha Woodmansee, "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author,'" *Eighteenth-Century Studies* 17 (1984): 425-48

Peter Jaszi, "Toward a Theory of Copyright: The Metamorphoses of 'Authorship,'" *Duke Law Journal* 41 (1991): 455-502

Washington Irving, "The Mutability of Literature" http://www.online-literature.com/irving/geoffrey_crayon/14/ and "The Art of Book Making" http://www.online-literature.com/irving/geoffrey_crayon/8/ from *The Sketchbook of Geoffrey Crayon* (1819-20)

Edgar Poe, "The Purloined Letter" (1845) http://xroads.virginia.edu/~HYPER/POE/purloine.html

Pope v. Curll, 26 Eng. Rep. 608 (Ch. 1741) (this is in Appendix A in the reading from Rose, above)

"Bartleby" redux

Further Reading:

Elizabeth Judge, "Eighteenth Century Fan Fiction and Copyright Law," podcast available at: http://www.law.case.edu/centers/lta/content.asp?content_id=89

[Jeannie Suk], "Originality," *Harvard Law Review* 115 (2002): 1988-2009

Michael Meehan, "Authorship and Imagination in Blackstone's *Commentaries on the Laws of England*," *Eighteenth-Century Life* 16 (1992): 111-26

Jody Greene, *The Trouble with Ownership: Literary Property and Authorial Liability in England, 1660-1730* (U of Penn. Press, 2005)

Ronan Deazley, *On the Origin of the Right to Copy: Charting the Movement of Copyright Law in Eighteenth-Century Britain (1695-1775)* (Hart, 2004)

Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke UP, 1998)

Simon Stern, "Tom Jones and the Economies of Copyright," *Eighteenth-Century Fiction* 9 (1997): 429-44

Richard G. Swartz, "Patrimony and the Figuration of Authorship in the Eighteenth-Century Literary Property Debates," *Works and Days* 7 (1989): 29-54

David A. Brewer, *The Afterlife of Character, 1726-1825* (U of Penn. Press, 2005)

Nov. 13 - Copyright Cont'd

Copyright, cont'd

Continuation of last week's reading, plus:

Oscar Wilde, "The Portrait of Mr. W. H," (published in 1889 in *Blackwood's* and reprinted in revised form in 1891 in *Lord Arthur Savile's Crime and Other Stories*): http://www.kingkong.demon.co.uk/gsr/portmrwh.htm

Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884); for the opinion below, see Sarony v Burrow-Giles (SDNY 1883)

On Sarony's background, see http://www.twainquotes.com/sarony/sarony.html. For the original image in dispute in Burrow Giles, see http://www.smithsonianmagazine.com/issues/2004/may/indelible.php and http://www.humnet.ucla.edu/humnet/clarklib/wildphot/sarony.htm and Sarony piracy.doc

By the way: to modern eyes, Wilde seems to be decked out in an outrageously dandified garb, but Eva Thienpont makes a fairly persuasive argument that for the most part, Wilde was just trying to look like an upper-class gent, with a few dandified touches that were added in order to promote *Patience*, a Gilbert & Sullivan operetta that his manager, Richard D'Oyly Carte, was underwriting. See Thienpont's article Visibly Wild(e) , particularly pp. 294-95.

OK

Nov. 20 - Criminal Responsibility and the Representation of Mental States

Criminal Responsibility and the Representation of Mental States

Paul H. Robinson, "A Brief History of Distinctions in Criminal Culpability.pdf," *Hastings Law Journal* 31 (1980): 815-53

Joel Peter Eigen, "Double Consciousness in the Nineteenth Century," in *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London* (Johns Hopkins UP, 2003), pp. 15-34

Robert Louis Stevenson, *The Strange Case of Dr. Jekyll and Mr. Hyde* (1887)

Further Reading:

Kenneth W. Simons, "Rethinking Mental States," *Boston Univ. Law Rev.* 72 (1992): 463-554

Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford UP, 2003)

Jonathan Grossman, *The Art of Alibi: English Law Courts and the Novel* (Johns Hopkins UP, 2002)

Nicola Lacey's 2007 Cecil. A. Wright Lecture at the U. of T. Law School, "From Moll Flanders to Tess of the D'Urbervilles: Women, Autonomy and Criminal Responsibility in Eighteenth and Nineteenth Century England," http://mediacast.ic.utoronto.ca/20070308-Law/index.htm

Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Johns Hopkins UP, 1992)

Kevin Jon Heller, "The Cognitive Psychology of Circumstantial Evidence.pdf," *Michigan Law Review* 105 (2006): 241-305

Dominic LaCapra, *Madame Bovary on Trial* (Cornell UP, 1982)

James Fitzjames Stephen, "The License of Modern Novelists," *Edinburgh Review* 106 (1857): 124-56

James Fitzjames Stephen, "The Relation of Novels to Life," in Stephen, *Cambridge Essays* (1855), pp. 148-92

Randall Craig, "Fictional License: The Case of (and in) *Great Expectations*," *Dickens Studies Annual* 35 (2005): 109-32

Edgar Janes Bliss, *The Peril of Oliver Sargent* (Webster, 1891)

Further connections:

Anne Banfield, *Unspeakable Sentences: Narration and Representation in the Language of Fiction* (RKP, 1982)

Nov. 27 - Privacy

Privacy

Louis D. Brandeis & Samuel D. Warren, "The Right to Privacy," *Harvard Law Review* 4 (1890): 193-220

Oscar Wilde, *The Picture of Dorian Gray* (published serially in 1890 in *Lippincott's;* revised and reprinted in book form in 1891)

Further Reading:

Entick v Carrington (1765) 19 St. Tr. 1029

Deborah Nelson, *Pursuing Privacy in Cold War America* (Columbia UP, 2002)

Robert Caserio, "Supreme Court Discourse vs. Homosexual Fiction," South Atlantic *Quarterly* 88 (1989): 267-99

Jody Greene, "Public Secrets Sodomy and the Pillory in the Eighteenth Century and Beyond," *Eighteenth Century: Theory and Interpretation* 44 (2003): 203-32

Reinhold Kramer, "Section 8 of the Charter and English-Canadian Fiction," *Dalhousie Review* 78 (1998): 385-413

Stanley A. Cohen, "The Paradoxical Nature of Privacy in the Context of Criminal Law and the Canadian Charter of Rights and Freedoms," *Canadian Criminal Law Review* 7 (2002): 125-45

Robert C. Post, "Rereading Warren and Brandeis," *Case Western Law Review* 41 (1991): 647-80

Mitchell A. Flagg, "Star Crazy: Keeping the Right of Publicity out of Canadian Law," *Intellectual Property Journal* 13 (1999): 179-236

OK

Dec. 4 - Where from Here?

Where from Here?

Tenth Anniversary Symposium, *Yale Journal of Law & the Humanities* 10 (1998): 389-420

Austin Sarat, "Traditions and Trajectories in Law and Humanities Scholarship.pdf "

Peter Brooks, "A Slightly Polemical Comment on Austin Sarat"

"Notes from the Editorial Advisory Board"

Judith Resnik, "On the Margins: Humanities and Law "

Annelise Riles, "A New Agenda for the Cultural Study of Law: Taking on the Technicalities," Buffalo *Law Review* 53 (2005): 973-1033

David Howarth, "Is Law a Humanity (or is it more like Engineering)?," *Arts & Humanities in Education* 3 (2004): 9-20

possible: Steph Tai, *For Ellen, Who Will Be Thirty-Two in June* (unpublished book manuscript, soon to be a major bestseller)

possible: J.M. Balink & Sanford Levinson, "Law and the Humanities - An Uneasy Relationship," *Yale Journal of Law & the Humanities* 18 (2006) 155-87

Further Reading:

J.M. Balkin, *Cultural Software: A Theory of Ideology* (Yale UP, 1998)

Lawrence Rosen, *Law as Culture* (Princeton UP, 2006)

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